

Item SPR06-07 Response Form

Title: Appellate Procedure: Writ of Supersedeas (amend Cal. Rules of Court, rules 49 and 56)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Invitations to Comment (Proposal SPR06-07)

Title	Appellate Procedure: Writ of Supersedeas (amend Cal. Rules of Court, rules 49 and 56)
Summary	This proposal would amend rule 49 to provide that a request for a temporary stay, pending a decision on a petition for a writ of supersedeas that is filed separately from the petition, must be served on the respondent. It would also amend rule 56 to clarify that it does not apply to petitions for a writ of supersedeas.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Rule 49 of the California Rules of Court addresses petitions for writs of supersedeas, which are petitions requesting that the Court of Appeal stay the enforcement of a trial court judgment or order pending a decision on appeal. Under this rule, a party may ask the Court of Appeal to issue a temporary stay, pending the court's decision on the petition. In most cases, the request for such a temporary stay is included in the party's petition and, since such petitions must be served, the respondent receives a copy of the request. However, under rule 49, a party may also file its request for the temporary stay separately from the petition. When the stay request is separately filed, rule 49 provides that the request need not be served on the respondent except in cases involving the custody of a minor.</p> <p>To ensure that the respondent receives notice of any separately filed request for a stay, this proposal would amend rule 49 to require that such requests be served on the respondent. The amendment would also permit the Chief Justice or appellate presiding justice, for good cause, to excuse advance service.</p> <p>Rule 56 of the California Rules of Court generally addresses original proceedings in reviewing courts. Currently, this rule provides that it "governs petitions to the reviewing court for writs of mandate, certiorari, or prohibition, or other writs within its original jurisdiction." Rule 56 contains specific exemptions both for petitions for writs of habeas corpus, which are governed by rules 60 and 60.5, and for certain petitions for writs of review, which are governed by rules 57–59. Because rule 49 already specifically addresses requirements for petitions for writs of supersedeas, this proposal would add another</p>

specific exception to rule 56 for petitions for such writs.

This proposal would also delete from rule 56 the provision stating that the proof of service must name each party represented by each attorney, because rule 40.1, which sets out service and filing requirements applicable in all appellate proceedings, already establishes this requirement.

Attachment

Rules 49 and 56 of the California Rules of Court would be amended, effective January 1, 2007, to read:

Rule 49. Writ of supersedeas

(a) Petition

- (1) A party seeking a stay of the enforcement of a judgment or order pending appeal may serve and file a petition for writ of supersedeas in the reviewing court.
- (2) The petition must bear the same title as the appeal and, if known, the appeal's docket number.
- (3) The petition must explain the necessity for the writ and include points and authorities.
- (4) If the record has not been filed in the reviewing court, the petition must include:
 - (A) The judgment or order, showing its date of entry;
 - (B) The notice of appeal, showing its date of filing; and
 - (C) A statement of the case, including a summary of the material facts.
- (5) The petition must be verified.

(b) Opposition

- (1) Unless otherwise ordered, any opposition must be served and filed within 15 days after the petition is filed.
- (2) An opposition must state any material facts not included in the petition and include points and authorities.
- (3) The court may not issue a writ of supersedeas until the respondent has had the opportunity to file an opposition.

(c) Temporary stay

- (1) The petition may include a request for a temporary stay under rule 49.5 pending the ruling on the petition.

- 1 (2) ~~Except when the custody of a minor is involved, A~~ separately filed
2 request for a temporary stay ~~need not~~ must be served on the respondent.
3 For good cause, the Chief Justice or presiding justice may excuse advance
4 service.
5

6 **(d) Issuing the writ**
7

- 8 (1) The court may issue the writ on any conditions it deems just.
9
10 (2) The court must hold a hearing before it may issue a writ staying an order
11 that awards or changes the custody of a minor.
12
13 (3) The court must notify the superior court, under rule 56(j), of any writ or
14 temporary stay that it issues.
15
16

17 **Rule 56. Original proceedings**
18

19 **(a) Application**
20

- 21 (1) Except as provided in (2), this rule governs petitions to the reviewing
22 court for writs of mandate, certiorari, or prohibition, or other writs within
23 its original jurisdiction. In all respects not provided for in this rule, rule
24 14 applies.
25
26 (2) This rule does not apply to petitions for writs of supersedeas under rule
27 49, petitions for writs of habeas corpus, except as provided in rule 60.5,
28 or ~~to~~ petitions for writs of review under rules 57–59.
29

30 **(b)–(e) *****
31

32 **(f) Service**
33

- 34 (1)–(2) ***
35
36 (3) The proof of service must give the telephone number of each attorney
37 served ~~and name each party represented by each attorney.~~
38
39 (4)–(6) ***
40

41 **(g) *****
42

Advisory Committee Comment ~~(2005)~~

Revised rule 56 combines the provisions of former rules 56 and 56.4.

Subdivision (a) Rule 40.1, which generally governs service and filing in reviewing courts, also applies to the original proceedings covered by this rule.

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